IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.12094 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BL YADAV, MANAGING TRUSTEE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12094 of 2003

MS SEJAL K MANDAVIA for Petitioner No. 1

MS ARCHNA RAVAL, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 09/09/2004

ORAL JUDGEMENT

1. RULE. Ms.Archna Raval, learned AGP, appears and waives service of rule on behalf of respondent Nos.1 & 2. With the consent of the respective parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioner - Trust has challenged the legality and validity of the order dated

12-09-2002 passed by respondent No.1 dismissing the appeal preferred by the petitioner - Trust as having time barred.

3. Ms.Mandavia, learned advocate for the petitioner, has submitted that the order dated 05-07-2002 came to be passed by the Director which came to be challenged by the petitioner on 20-08-2002 and as such, according to her, there is no delay at all and the appeal filed by the petitioner was within limitation. However, assuming that there is a delay in challenging the order dated 05-07-2002 then also looking to the delay of only few days the State Government ought to have considered the case of the petitioner on merits rather than dismissing the appeal on technical ground.

4. Mr.Archna Raval, learned AGP, has tried to support the order dated 12-09-2002 passed by the State Government.

5. It is an admitted position that the order passed on 05-07-2002 which came to be challenged by the petitioner before the State Government on 20-08-2002 so there was delay only of few days which cannot be said to be a gross delay which disentitle the petitioner to be heard on merits. As held by the Hon'ble Supreme Court in the case of The Collector, Land Acquisition, Anantnaj & Anr. Vs. Mst. Katiji & Ors., reported in AIR 1987 SC P. 1353 and other catena of judgments, rights of the parties should not be defeated on the technical ground and as far as possible the dispute is to be decided on merits.

6. Considering the aforesaid judgments and considering that there are only few days' delay, the impugned order dated 12-09-2002 requires to be quashed and set aside and accordingly the same is quashed and set aside. Respondent No.1 is directed to decide and disposed of the appeal preferred by the petitioner Trust against the order dated 05-07-2002 passed by respondent No.2 herein, the Director, within a period of 03 (three) months from the date of receipt of copy of this order.

Rule is made absolute to the aforesaid extent. Direct service permitted.

Sd/-

[M.R.SHAH, J]

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'Bhavesh'